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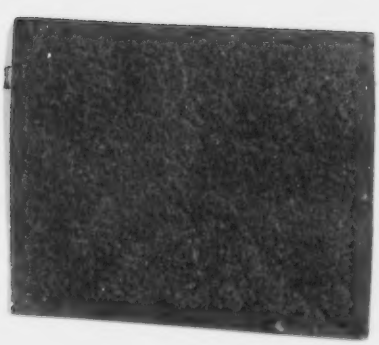
REPORT AND RECOMMENDATIONS MADE BY THE PANEL OF COMMISSIONERS CONCERNING PART ONE OF THE FIRST INSTALMENT OF CLAIMS BY GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS (CATEGORY "F" CLAIMS)



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Introduction

1. Following the creation of the United Nations Compensation Commission (the "Commission") by the United Nations Security Council 1/, the Commission's Governing Council (the "Governing Council") established six claims categories in which individuals, corporations and Governments could seek compensation for losses arising out of Iraq's invasion and occupation of Kuwait. Governments and international organizations were required to file their claims in category "F". Based on the claimants' classification of their claims, 42 Governments and 3 international organizations submitted 298 category "F" claims seeking compensation for a total amount of approximately 141 billion United States dollars ("US$") for their alleged losses. 2/

2. During its twenty-first session, on 22-23 July 1996, the Governing Council appointed a Panel of Commissioners composed of Mr. Bjørn Haug as Chairman and Messrs. Georges Abi-Saab and Michael J. Bonell as Commissioners (the "Panel") to review category "F" claims. In his reports of 30 April and 31 July 1996 to the Governing Council, the Executive Secretary of the Commission included the claims that are the subject of this report. 3/ The reports were issued in accordance with article 16, paragraph 3, of the Provisional Rules for Claims Procedure (the "Rules"). 4/ As provided for in the Rules, these reports were circulated to the members of the Governing Council, to the Government of the Republic of Iraq, and to Governments and international organizations that had submitted claims. Pursuant to article 32, paragraph 1, of the Rules, a number of Governments, including Iraq, submitted additional information and their views on the Executive Secretary's reports to the secretariat for transmission to the Panel.

3. On 20 March 1997, the first instalment of eleven category "F" claims was submitted to the Panel pursuant to article 32 of the Rules. Nine of the claims in the first instalment (the "Claims") for a total amount of approximately US$4,506,800 are the subject of this report. The following Claims were filed by Governments for certain of their political subdivisions, agencies, ministries, instrumentalities or controlled entities with the approximate amount claimed noted in parenthesis: 5/

(a) The Democratic People's Republic of Korea: State Commission of External Economic Affairs (US$1,148,474.28);

(b) The Kingdom of Denmark: Ministry of Foreign Affairs (US$747,734.79);

(c) The Federal Republic of Germany: North Rhine-Westphalia Ministry of Employment, Health and Social Affairs (US$180,287.46);

(d) The Republic of Hungary: Ministry of Foreign Affairs (US$219,044.09) and Ministry of International Economic Relations (US$59,055.61);

(e) The Kingdom of the Netherlands: Ministry of Foreign Affairs (US$351,917.15);

(f) New Zealand: Ministry of Foreign Affairs and Trade (US$76,366.67);

(g) The Federal Republic of Nigeria: Nigerian Embassy in Kuwait (US$403,771.51);

(h) The Democratic Socialist Republic of Sri Lanka: Ministry of Foreign Affairs (US$1,273,356.40).

These entities are referred to herein as "Claimants".

4. In article 38(e) of the Rules, the Governing Council provided that the Panel:

> "... report in writing through the Executive Secretary to the Governing Council on the claims received and the amount recommended to be awarded for each claimant. Each report will briefly explain the reasons for the recommendations."

Pursuant to such requirement, this report contains the Panel's findings and recommendations regarding the Claims.

5. The remaining two claims in the first instalment (the "Kuwaiti Claims") were submitted by Kuwait University and the Kuwait Ministry of Foreign Affairs (the "Kuwaiti Claimants"). For the reasons explained in the next paragraph the Panel will issue a separate report covering the Kuwaiti Claims in due course.

I. PROCEEDINGS

6. Based on the amount of compensation sought, the complexity of the legal issues raised and the volume of documentation filed in support of the Kuwaiti Claims, the Panel decided to classify them as "unusually large or complex", pursuant to article 38(d) of the Rules. Accordingly, the Panel gave notice to the Kuwaiti Claimants of its intention to complete its review of the Kuwaiti Claims within 365 days. Given those same considerations, the Panel determined that it would be possible to complete the review of the remaining nine Claims and submit a report and recommendations to the Governing Council within 180 days, in accordance with article 38(c) of the Rules.

7. On 21 March 1997, the Panel issued its first Procedural Orders. The Panel's classification of the Kuwaiti Claims as well as the remaining nine Claims was stated in the Procedural Orders that were transmitted by the secretariat to each Claimant. On the Panel's instructions, the secretariat transmitted copies of such Orders to Iraq.

8. In the preliminary review of the Claims, it was noted that several of the Claimants were seeking compensation for payments made to employees or other persons for the loss of tangible property or the loss of income or support. Because the individuals themselves may have been eligible to file claims with the Commission for such losses in categories "C" and "D", the Panel was concerned that the Claims might be seeking compensation for losses that were the subject of decided or pending category "C" and "D" claims. 6/ At the Panel's request, the secretariat consulted the Commission's claims databases and dockets and determined that there was a potential overlap between several of the Claims and certain category "C" claims.

9. As part of its effort to verify the Claims and, given its concern over the possible duplication of claims across categories, the Panel included interrogatories and requests for the production of documents in the Procedural Orders for five of the Claims. These Orders sought, inter alia, detailed information regarding the potential overlap between the Claims and the individual claims filed in category "C". 7/ The relevant Claimants were requested to file their responses by 20 May 1997. As a result of this process, portions of several Claims were disallowed because they sought compensation for losses that had been the subject of category "C" claims. 8/

10. The Panel considered that a third party, the Central Bank of Kuwait, might possess relevant information regarding the Sri Lankan claim. Accordingly, the Procedural Order issued for that Claim requested that the Government of Kuwait comment on certain statements made within the Claim and file any documents relevant to the Claim with the Commission.

11. On 17 April 1997, the Panel issued a Procedural Ruling regarding the Nigerian claim. In its ruling, the Panel noted that a portion of the Claim sought compensation for tangible property lost by the Claimant's Finance Attaché in Kuwait. However, the Claim contained no evidence demonstrating that the Claimant itself actually incurred a loss by reimbursing its employee for his property loss. The Panel, therefore, ruled that the portion of the Claim relating to the Finance Attaché's tangible property loss should be severed from the Claim. The Panel instructed the secretariat to return the documents relating to the severed portion of the Claim to the Government of Nigeria and to inform Nigeria that its Finance Attaché could seek compensation for his loss by submitting a new claim in category "C". On 15 May 1997, in accordance with the Panel's Procedural Ruling, Nigeria resubmitted this portion of the Claim in category "C" on behalf of its Finance Attaché.

12. Sri Lanka stated in its response to the Panel's Procedural Order that certain of the evidence requested was in the custody of its former Honorary Consul in Jordan. Deeming that such evidence, banknotes with a face value of 368,000 Kuwaiti dinars ("KD"), was critical to the verification of the Claim, on 23 May 1997 the Panel issued a further Procedural Order requesting that the evidence be produced at the Commission's headquarters

in Geneva on or before 30 June 1997. The Claimant complied with the Order and delivered the banknotes to the Commission on 18 June 1997.

13. In its proceedings, the Panel held regular sessions with the assistance of the secretariat. These sessions were conducted in private at the Commission's headquarters in Geneva. Pursuant to article 34 of the Rules, the secretariat provided administrative, technical and legal support to the Panel. The services of an independent loss adjusting firm were also retained to assist the secretariat and the Panel in reviewing the Claims.

II. THE CLAIMS

14. Pursuant to Governing Council decision 7 9/, the category "F" claim form used by Governments for submitting their claims classifies losses as follows: contract; business transaction or course of dealing; real property; other tangible property; bank accounts and securities; income-producing property; payment or relief to others; evacuation costs (of citizens or other nationals); public service expenditures; environmental damage and depletion of natural resources. The Panel notes that several of these classifications relate to losses incurred by States in the exercise of their protective functions. The Claims allege eight of these eleven loss types. The Claimants' contentions regarding their losses are briefly described below by loss type. In some cases, based on its review of the documents underlying the Claims, the Panel has reclassified the losses stated by Claimants on their claim forms.

A. Contract

1. Hungary

15. The Hungarian Ministry of Foreign Affairs 10/ claims that, following Iraq's invasion and occupation of Kuwait, it was required to close its embassy in Kuwait City on or about 31 August 1990. The Claimant states that, following the closure of its embassy, it made "redundancy payments" to its local staff pursuant to the terms of their employment relationship, which was governed by Kuwaiti labour law. Hungary seeks compensation in the amount of US$21,067 for the expenses it incurred in making such redundancy payments.

2. The Netherlands

16. The Netherlands claims that "Iraq's armed attacks on Kuwait caused extensive damage to [its diplomats'] household effects, while many personal belongings disappeared in widespread plundering by [the] Iraqis." The Claimant states that "once it was possible to make an estimate of the actual damage to their personal property, staff of the embassies in Kuwait and Baghdad were reimbursed for the loss of and or damage to their property". The Claimant asserts that it was required to make the reimbursements pursuant to the Netherlands Foreign Service Regulations which govern the employment relationship between the Claimant and its

diplomatic personnel. The Netherlands seeks compensation in the amount of 225,980.28 Netherlands guilders ("f.") for the expenses it incurred in making the reimbursements.

3. New Zealand

17. New Zealand claims that it made severance payments to the local staff at its embassy in Baghdad after that embassy was closed on 12 December 1990. The Claimant states that the payments were made in accordance with the employment contracts that it had previously entered into with the workers. New Zealand seeks compensation in the amount of 36,179 New Zealand dollars ("$NZ") for the expenses it incurred in making such redundancy payments.

B. Business transaction or course of dealing

Democratic People's Republic of Korea

18. The Democratic People's Republic of Korea, which operated a trade mission in Kuwait City prior to the invasion, claims that on 23 June 1990 it paid a deposit on a new car to a Kuwait City automobile dealer. The car was never delivered to the Claimant. After the liberation of Kuwait, the Claimant requested that the dealer either deliver the car or refund its deposit. The dealer refused, stating that he could not refund the Claimant's money until he had been "compensated for all cars [he] lost during the war from the UNCC". The Claimant seeks compensation in the amount of KD 5,825.500 for its lost deposit on the new car.

C. Real property

1. Denmark

19. Denmark claims that, following Iraq's invasion of Kuwait, it attempted to keep its embassy in Kuwait City open. However, Iraq reportedly refused "to recognize the Embassy of Denmark in Kuwait and subsequent[ly] order[ed]" that it be closed down. The Claimant alleges that it had paid rent in advance for its embassy premises for the period of the occupation of Kuwait but, due to the forced closure of the embassy as of 10 September 1990, it was deprived of the use of the premises. Denmark seeks compensation in the amount of 266,151 Danish krone ("DKr") for rent that it prepaid for its embassy premises in Kuwait City during the period of the occupation.

2. Hungary

20. Following Iraq's invasion of Kuwait, the Hungarian Ministry of Foreign Affairs evacuated its diplomats from Kuwait and Iraq. The Claimant asserts that, upon resuming operations at its embassies in both countries, it was required to repair the buildings and to replace "damaged and scrapped assets", including security systems, in Baghdad and Kuwait City.

Hungary seeks compensation in the amount of US$73,037.81 for such repair and replacement costs.

21. The Hungarian Ministry of International Economic Relations maintained a commercial section at the Hungarian embassy in Kuwait City. In a separate claim from that submitted by the Ministry of Foreign Affairs, it alleges that, following the liberation of Kuwait, it was required to repair physical damage to the offices of its commercial section. Hungary also seeks compensation in the amount of KD 5,973.722 for these repair costs.

3. Nigeria

22. The Claimant states that, following the Iraqi invasion of Kuwait, it evacuated its diplomats and temporarily closed its embassy in Kuwait City. Following the liberation of Kuwait, the Claimant asserts that, among other damage inflicted, the embassy had been vandalized, the garden ruined and two of the walls of the embassy contained bullet holes. Nigeria seeks compensation in the amount of US$12,655 for the costs of repairing the damage to its embassy.

D. Tangible property

1. Democratic People's Republic of Korea

23. The Democratic People's Republic of Korea alleges that at dawn on 16 September 1990, during the Iraqi occupation of Kuwait

> "... five armed men came in the premises of the Trade Representation of DPRK in Kuwait and at gunpoint destroyed two safes to take away 550 thousand German Marks and three bars of gold each weighing 12.5 kilograms ..."

The Claimant seeks compensation in the amount of US$799,832.92 for the loss of such currency and gold.

24. The Claimant also asserts that "as a result of ... Iraq's 2 August 1990 invasion of Kuwait, the Trade Representation of the Democratic People's Republic of Korea could not continue to carry out its mission and had to evacuate its officials from Kuwait on 16 September 1990". The Claimant states that, when its representatives returned to Kuwait following its liberation, they found that the trade mission's office equipment had been looted. The Claimant seeks compensation in the amount of KD 5,840 for its lost office equipment.

25. The Claimant further asserts that, having been evacuated from Kuwait, its employees and citizens were required by Iraq to go to Baghdad. When the evacuees were eventually allowed to leave Iraq, the Claimant states that "the seven families had to leave the cars parked outside the courtyard of the Embassy of the People's Republic of China in Iraq" and that afterwards Iraqi officials took possession of the cars. The Democratic

People's Republic of Korea seeks compensation in the amount of KD 64,200 for the cars allegedly taken by Iraqi officials.

2. Denmark

26. Denmark claims that the furniture, security and telecommunications equipment and an automobile located at its Kuwait City embassy were damaged or stolen during the period of the Iraqi occupation. The Claimant alleges that even before it was forced to evacuate its embassy

> "... Iraqi military forces broke into the residence of the Ambassador on 25 August 1990 in order to rig up gun nests on the roof. Iraqi military personnel committed burglary in the chancellery on 29 August and on 13 September 1990."

Denmark seeks compensation in the amount of DKr 389,485 for the lost or damaged furniture, equipment and car.

3. Hungary

27. Hungary's Ministry of International Economic Relations claims that its Kuwait City offices were "ransack[ed] and damage[d]" "by the invading Iraqi soldiers" following Iraq's invasion of Kuwait. The Claimant states that, when its representatives returned to Kuwait, they found that its office equipment and supplies were "missing" or "damaged beyond repair". The Claimant also asserts that four apartments that it maintained for its diplomats were looted during the Iraqi occupation of Kuwait. Hungary seeks compensation in the amount of KD 11,094.250 for the lost or damaged office equipment and the contents of its apartments.

4. New Zealand

28. New Zealand claims that one of its Baghdad embassy vehicles was in Kuwait for repair and maintenance at the time of the Iraqi invasion. The Claimant states that it was unable to recover the vehicle before its embassy in Baghdad was closed. It asserts that, following the liberation of Kuwait, its efforts to trace the vehicle were unsuccessful. New Zealand seeks compensation in the amount of $NZ 17,322 for the lost vehicle.

5. Nigeria

29. After closing its embassy in Kuwait City, Nigeria evacuated its diplomats and others by car via Baghdad. The Claimant asserts that during the evacuation several of its cars were left in Baghdad. Following the liberation of Kuwait, the Claimant states that it sent its employees to Baghdad to recover the vehicles, which they did. Nigeria seeks compensation in the amount of US$29,810.31 for the cost of recovering the vehicles that were left in Baghdad during the evacuation.

E. Bank accounts and securities

New Zealand

30. New Zealand claims that, prior to the Iraqi invasion of Kuwait, it maintained an Iraqi dinar bank account at the Al Ahli Bank of Kuwait. The Claimant alleges that the "closure of the Al Ahli Bank of Kuwait at the time of the invasion prevented [it] from recovering a credit [balance] in the account". As of the date it submitted its Claim, the Claimant states that it was unable to have access to its funds. New Zealand seeks compensation in the amount of $NZ 7,388 for the money held in its Iraqi dinar denominated bank account in Kuwait.

F. Payment or relief to others

1. Germany

31. Germany claims that the Iraqi invasion of Kuwait

> "... caused both German and non-German individuals to leave Kuwait and take refuge in Germany or other countries. Under German social assistance laws, such individuals received financial support. To all intents an[d] purposes, these benefits must be seen as part of the damages caused by the unlawful invasion of Iraqi forces into Kuwait."

32. The Claimant states that it gave financial support to several German nationals who fled Kuwait following the invasion leaving their assets behind or who lost their jobs or means of support in Kuwait; to an Iraqi national and his family who had fled Kuwait and sought political asylum in Germany; to Kuwait-based students studying in Germany whose source of parental support was cut off after the Iraq invasion; and to a Kuwaiti national who had been on holiday in Germany and was stranded at the airport when his flight home was cancelled due to the invasion. Germany seeks compensation in the amount of 281,609.02 deutsche mark ("DM") for the financial support that it paid to such persons.

2. Hungary

33. The Hungarian Ministry of Foreign Affairs claims to have incurred "[e]xtraordinary compulsory vacation costs of the Hungarian staff of embassies both in Kuwait and Baghdad" following their evacuation from those countries. Hungary seeks compensation in the amount of US$21,898 for such costs.

3. The Netherlands

34. The Netherlands claims that, following the Iraqi invasion of Kuwait, it introduced a "financial assistance scheme" for its Middle Eastern diplomats and their families in order

> "... to help cover the extra costs incurred by personnel who remained [in the Netherlands instead of returning to their duty posts], their families, and personnel and the families of personnel who were repatriated [to the Netherlands] at a later stage".

35. The Claimant states that the scheme covered items such as rent for furnished accommodation, hotel accommodation, school fees, a clothing allowance and an allowance for families who were obliged to remain in the Netherlands without a partner. The Netherlands seeks compensation in the amount of f. 393,745.82 for the costs it incurred through its financial assistance scheme.

4. Sri Lanka

36. Sri Lanka claims that its Honorary Consul in Jordan provided humanitarian support to the thousands of Sri Lankan refugees who fled Kuwait via Jordan following the Iraqi invasion of Kuwait. The Claimant asserts that, in the aftermath of the invasion, Jordanian banks would not exchange its citizens' Kuwaiti currency for Jordanian currency. The Sri Lankan refugees, it claims, were thus unable to purchase airline tickets out of Jordan or necessities of life in Jordan.

37. The Claimant states that its Honorary Consul, in light of this situation, exchanged KD 741,000 of the refugees' money. It asserts that the currency exchanges were made only in small amounts for each person and were made solely in order to provide the refugees with funds for urgent expenses. The Claimant contends that, after the liberation of Kuwait, the Central Bank of Kuwait refused to accept KD 368,000 of the banknotes exchanged by the Claimant's Honorary Consul. The Central Bank of Kuwait rejected the banknotes because their serial numbers indicated that they were among the notes looted from the vaults of the Central Bank by Iraqi forces during the occupation. The Claimant alleges that immediately upon entering Kuwait City the Iraqi forces stole the dinar notes from the Central Bank and circulated them. Such notes, according to the Claimant, ultimately ended up in the hands of the Sri Lankan refugees. This assertion is also made by the Government of Kuwait, which has filed a separate claim for its Central Bank arising out of the theft. 11/ Sri Lanka seeks compensation in the amount of KD 368,000 for its invalid bank notes.

G. Evacuation costs

1. Democratic People's Republic of Korea

38. The Democratic People's Republic of Korea claims that it was required to evacuate its trade representatives and citizens from Kuwait on a journey that took them through Iraq, Jordan and other countries before eventually reaching Pyongyang. The Claimant states that, upon their arrival in Baghdad, its evacuees "had to stay from 16 to 20 September 1990 at the

expense of the Government of the DPRK in [the] Rasheed hotel in Baghdad because the Iraqis did not allow the families to leave Iraq until the families obtained through [an] unofficial channel the exit permission with extra cost". The Claimant seeks compensation in the amount of US$83,392.23 for the cost of evacuating its trade representatives and citizens from Kuwait to Pyongyang. This amount includes the sum paid through an unofficial "Iraqi channel" for permission to leave Iraq.

2. Denmark

39. Denmark claims that it incurred expenses as a result of "the forced evacuation of a number of Danish citizens from Kuwait and their illegal detention in Baghdad by the Government of Iraq". The Claimant states that the

> "... basic pattern as regards Danish citizens was that most of them left Kuwait organized as a group on 23 August 1990 in a motor-car convoy to Baghdad. There, since the Authorities did not immediately grant permission to leave the country, they had to be accommodated in hotels at the expense of the Danish Government, until they were allowed to leave, in small or larger groups."

40. In addition to evacuating its citizens from Kuwait and Iraq, the Claimant asserts that it was required to evacuate its diplomats from Kuwait City and Baghdad as well as from other Middle Eastern cities, including Ankara, Riyadh, Teheran, Tel Aviv and Damascus. Denmark seeks compensation in the amount of DKr 3,822,547.67 for the costs it incurred in evacuating its citizens and diplomats from Iraq, Kuwait and other Middle Eastern countries.

3. Hungary

41. The Hungarian Ministry of Foreign Affairs claims that, in the aftermath of the Iraqi invasion of Kuwait, it was required to evacuate "Hungarian citizens from Kuwait and Baghdad". In connection with the evacuation, the Claimant alleges that it paid for buses, catering services and chartered aircraft for its evacuees. The Claimant also asserts that it evacuated its diplomats from Kuwait and Iraq to Budapest by car. Hungary seeks compensation in the amount of US$103,041 for the expenses it incurred in evacuating its diplomats and citizens from Iraq and Kuwait.

4. The Netherlands

42. The Netherlands claims that "[a]t the beginning of December 1990, all remaining members of staff from the embassy in Kuwait, including the ambassador were repatriated from Baghdad where they had been since leaving Kuwait". The Netherlands seeks compensation for an unspecified amount associated with the evacuation of its diplomats from Kuwait and Iraq.

5. New Zealand

43. New Zealand claims that the invasion of Kuwait "forced the closure of the New Zealand Embassy" in Iraq several months later. As a result, it was required to evacuate its diplomats from Baghdad. The Claimant states that:

> "... under normal circumstances, the two New Zealand staff at the Embassy would have been returned to New Zealand as part of a preplanned transfer within the standard budget ... [but] circumstances created by the invasion forced the Ministry to use evacuation plans in less than ideal conditions. The consequence of this was that the two officers were transferred at a cost ... more than a normal transfer."

New Zealand seeks compensation in the amount of $NZ 36,312, which represents the difference between the cost of evacuating its diplomats after the invasion and the cost of transferring them under normal circumstances.

44. The Claimant also asserts that its embassy in Baghdad supported and provided relief to New Zealand nationals in Iraq who were "adversely affected by the invasion of Kuwait" and were evacuated from the country. Such support "required the provision of services and resources over and above those provided in the normal operation of the New Zealand Embassy in Baghdad". New Zealand also seeks compensation in the amount of $NZ 26,514 for the extraordinary expenses that its embassy incurred assisting in the evacuation of its nationals from Iraq.

6. Nigeria

45. Nigeria claims that it "evacuated its five member staff and all their family members, nine resident Nigerians and members of their family, six Sierra Leone nationals, six Beninese nationals, one Togolese together with all their family members from Kuwait through Baghdad, Jordan to Egypt". The Claimant states that the embassy staff members were evacuated to Abu Dhabi, while the Nigerian civilians were evacuated "to Nigeria [and] the other African nationals were handed over to their respective [embassies] in Cairo Egypt." Among the expenses the Claimant asserts that it incurred was the purchase of 60 gas masks for the evacuees. Nigeria seeks compensation in the amount of US$107,500.63 for these evacuation costs.

H. Public service expenditures

Nigeria

46. Nigeria claims that, following the Iraqi invasion of Kuwait, its Kuwait City embassy was asked by the Nigerian Ministry of Foreign Affairs to relocate its Ambassador and staff to Abu Dhabi. Following the liberation of Kuwait, the Claimant asserts, it relocated its operations back to Kuwait City. Consequently, it claims that it incurred substantial

operating expenses for its temporary embassy in Abu Dhabi during the period of the occupation of Kuwait. Nigeria seeks compensation for such expenses in the amount of US$204,126.74.

III. LEGAL FRAMEWORK

A. Applicable law

47. After the suspension of offensive combat operations by Kuwait and the United Nations Member States cooperating with Kuwait, the Foreign Minister of Iraq confirmed, in letters to the Security Council, Iraq's agreement to comply fully with all of the relevant resolutions 12/ thereby recognizing the responsibility of Iraq "under international law ... for any loss, damage or injury arising in regard to Kuwait and third States, and their nationals and corporations, as a result of the invasion and illegal occupation of Kuwait by Iraq". 13/

48. The Security Council, in paragraph 16 of resolution 687 (1991), decided that "Iraq ... is liable under international law for any direct loss, damage ... or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait". In passing resolution 687 (1991), the Security Council acted in the exercise of its powers to maintain and restore international peace and security under Chapter VII of the United Nations Charter. 14/

49. Based on the foregoing, the Panel considers as established the responsibility of Iraq under international law for the above-mentioned direct losses, damages or injuries. 15/

50. Pursuant to article 31 of the Rules, the Panel in deciding the claims shall apply the following:

> "... Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

51. The Governing Council has provided some guidance on the issue of what types of loss are to be considered direct and, therefore, compensable. The most relevant decisions of the Governing Council to the Claims covered by this report are decisions 7 and 9.

52. In decision 7, the Governing Council considered direct losses to include

> "... any loss suffered as a result of ... [m]ilitary operations or threat of military action by either side during the period 2 August to 2 March 1991; ... [d]eparture of persons from or their inability

> to leave Iraq or Kuwait (or a decision not to return) during that period; ... [a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation; ... [t]he breakdown of civil order in Kuwait or Iraq during that period; or ... [h]ostage-taking or other illegal detention". 16/

53. In the same decision, the Governing Council added, in paragraph 36, that such losses include "loss of or damage to property of a Government, as well as losses and cost incurred by a Government in evacuating its nationals from Iraq or Kuwait". Moreover, the Governing Council stated that compensation is available to "reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

54. In decision 9, the Governing Council further defined what constitutes a direct loss by deciding that "[i]n a case where business property had been lost because it had been left unguarded by company personnel due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". 17/ While decision 9 focuses on business losses, it is the Panel's view that the Governing Council's guidance regarding directness and causation where unguarded property has been damaged or destroyed is equally applicable to Government claims. 18/

55. These rules and directives governing the activities of the Panel have been interpreted in light of general principles of international law. Such international legal principles were also applied by the Panel to fill gaps where necessary.

B. Procedural and evidentiary requirements

56. In contrast to the simplified statement of claim and evidentiary requirements imposed on individual claimants seeking compensation in the expedited "A", "B" and "C" claims categories, the Governing Council expressly stated that with respect to business losses there "will be a need for detailed factual descriptions of the circumstances of the claimed loss, damage or injury" in order for a claim to receive compensation with respect to business losses. 19/ In the Panel's view, this requirement applies to all claims in category "F".

57. All category "F" claimants were required to "submit with the[ir] claim forms ... a separate 'Statement of Claim'" which had to include the following particulars:

> "[t]he date, type and basis of the Commission's jurisdiction for each element of loss; ... [t]he facts supporting the claim; [t]he legal basis for each element of the claim; and [t]he amount of compensation sought and an explanation of how this amount was arrived at". 20/

58. In addition to submitting a statement of claim, under article 35, paragraph 1, of the Rules, all category "F" claimants were required to submit "documentary and other appropriate evidence sufficient to demonstrate the circumstances and the amount of the claimed loss". 21/ The Governing Council emphasized the mandatory nature of this requirement in decision 7, paragraph 37, which states that "[s]ince these [category "F"] claims will be for substantial amounts, they must be supported by documentary and other appropriate evidence".

59. Pursuant to article 6, paragraph 5, of the Rules, the statement of claim and any documents submitted in support of a claim "must be submitted in English or be accompanied by an English translation".

60. In its review of the Claims, the Panel found that all the Claims contained a statement of claim and evidence sufficient to establish at least parts of certain loss elements alleged within the Claims. But the Panel also found that within certain Claims individual loss elements or portions thereof were not supported by particularized statements of claim or documentary or other evidence sufficient to demonstrate the circumstances and amount of the claimed loss. In such cases, the Panel could not recommend that compensation be awarded for the unsubstantiated losses. The Panel's decision not to recommend compensation for portions of Claims that did not state the circumstances of the alleged loss with particularity or that were not supported by evidence sufficient to establish such a loss is not only in accordance with the Rules of the Commission, but is also consistent with the general principles of international procedural law and practice. 22/

61. Where Claimants submitted a statement of claim meeting the Commission's requirements and the statement was supported by documentary or other evidence, the Panel was required, under article 35, paragraph 1, of the Rules, to "determine the admissibility, relevance, materiality and weight" of such evidence. In evaluating the evidence submitted by the Claimants, the Panel had to decide whether such evidence was sufficient to demonstrate the circumstances and the amount of the claimed loss.

62. In many of the Claims the Claimants' documentary or other evidence established that an alleged loss had, in fact, occurred. But the evidence was insufficient in those Claims to demonstrate with a reasonable degree of certainty the amount of the loss. In such cases, the Panel, in conformity with general principles of law, exercised its discretion in assessing the amount of compensation that should be awarded. 22/ In exercising such discretion, the Panel took into account the level and type of evidence that should reasonably be required of a Claimant given the overall circumstances at the time of the loss, particularly in Iraq and Kuwait.

C. The Panel's role in the proceedings

63. In order to make its report on the Claims to the Governing Council and recommend the amount that should be awarded to each Claimant, the Panel

was required to make determinations of law and fact for every Claim. The Panel determined, on the basis of the facts that it considered had been substantiated by each Claimant, whether the loss was eligible for compensation under the applicable rules and criteria. If the loss was found to be compensable, the Panel then determined the proper amount of compensation that should be awarded. 24/

64. In view of the fact that Iraq had limited opportunities to comment on or object to the Claims, the Panel considered that it was under a stringent duty to determine with respect to each Claim whether the alleged loss had occurred, whether it was directly caused by Iraq's invasion and occupation of Kuwait and whether the amount of loss was adequately established. Furthermore, the Panel has given careful consideration to the legal positions taken by Iraq as well as by other Governments that submitted additional information and their views on the Executive Secretary's reports circulated pursuant to article 16 of the Rules.

IV. COMPENSABILITY OF THE CLAIMS

65. The Panel now considers the compensability of the Claims in light of the legal framework set out above.

A. Contract

66. New Zealand and the Hungarian Ministry of Foreign Affairs seek compensation for redundancy payments that they made to their local employees upon the closure of their embassies in Kuwait and Iraq, respectively. The relationship between the Claimants and their former employees was contractual in nature and the terms of such contracts, whether written or implied by law, required that the payments be made upon termination of the employment relationship.

67. The Netherlands seeks compensation for reimbursements that it made to its diplomats whose property was lost or damaged in Kuwait or Iraq. Here, again, the relationship between the Claimant and its diplomats was contractual in nature and the regulations governing the relationship required the Claimant to make the reimbursements.

68. As noted above, the Governing Council in decision 7 provided that compensation is available to "reimburse payments ... by Governments ... to ... employees ... pursuant to contractual obligations -- for losses covered by any of the criteria adopted by the Council". 25/ For individuals such criteria include "losses of income, support, housing or personal property." 26/ In view of the circumstances of the losses and decision 7, the Panel decides that the redundancy payments and reimbursements for the loss of tangible property made by the Claimants pursuant to their contractual obligations should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

B. Business transaction or course of dealing

69. The Democratic People's Republic of Korea alleges that a Kuwait City automobile dealer has refused to return the deposit made by the Claimant on a new car prior to Iraq's invasion and occupation of Kuwait. The transaction, as described by the Claimant, shows that, prior to Iraq's invasion and occupation of Kuwait, the automobile dealer undertook an obligation to either deliver a car to the Claimant or return its deposit.

70. While the Panel notes that the invasion and occupation of Kuwait might have given rise to a hardship or force majeure situation that may have excused the automobile dealer from his duty to deliver the new car, the event would not, under principles of international commercial contract law, excuse him from his alternative obligation to return the Claimant's deposit. 27/ Accordingly, the Panel does not consider the automobile dealer's refusal to return the Claimant's deposit to constitute a direct loss within the meaning of paragraph 16 of resolution 687 (1991). Although the Claimant may have a claim against the automobile dealer, this Commission is not the proper forum for its adjudication.

C. Real property

71. Both Hungarian Claimants and Nigeria seek compensation for the cost of repairing physical damage to their embassy buildings in Kuwait City. Hungary also claims compensation for damage caused to its embassy in Baghdad. The Governing Council has provided that compensatory payments are available for the "loss of or damage to property of a Government". 28/ Accordingly, the Panel decides that damage to embassy property in Iraq and Kuwait should be compensated.

72. The Claimants allege that they discovered the damage to their buildings when their diplomats returned to Baghdad and Kuwait City after the Gulf War ended. They do not proffer any evidence showing who actually caused the damage. Addressing this issue, the Governing Council stated that property that was lost due to the "breakdown of civil order in Kuwait or Iraq" from the period of 2 August 1990 until 2 March 1991 29/ or "because it had been left unguarded ... due to the situation in Iraq and Kuwait" 30/ may be considered as resulting directly from the invasion and occupation.

73. In light of Governing Council decisions 7 and 9 and, given the fact that the Claimants' diplomats, having been evacuated, were unable to protect their real property in Iraq or Kuwait from damage during the invasion and occupation of Kuwait, the Panel considers the causal link between the losses and Iraq's invasion and occupation to have been established in these Claims. Accordingly, the Panel decides that the repair costs incurred by the Claimants should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

74. Denmark alleges that, prior to Iraq's invasion of Kuwait, it prepaid the rent on its embassy premises for the period covering the occupation. The Claimant seeks compensation for the amount of rent it prepaid because it was unable to use the embassy during the period of occupation. The Panel finds that the mere permanent or temporary closure of a diplomatic mission, even in time of armed conflict, does not give rise to a claim for compensation. 31/ In any event, here, the Claimant would have incurred the rental expense regardless of whether Iraq invaded and occupied Kuwait. Consequently, the Panel does not consider the rent the Claimant prepaid for its embassy in Kuwait City to constitute a direct loss within the meaning of paragraph 16 of resolution 687 (1991).

75. In its review of the Claims seeking compensation for the loss of real property, the Panel determined that one of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. The Hungarian Ministry of Foreign Affairs Claim relates to the cost of repairing its "security systems in Kuwait and Baghdad". The Claimant states that it does not "attach relevant bills or inventory to [its] claim due to security reasons. At the same time [it] declare[s] hereby that [its] claim is fair and reasonable." In view of the failure to submit any evidence, however limited, in support of this loss, the Panel cannot recommend compensation for the portion of this Claim relating to the security systems.

D. Tangible property

76. Denmark asserts that Iraqi military personnel burgled its embassy on two specific dates during the occupation of Kuwait, stealing office equipment, furniture and a car. As provided in paragraph 34 of decision 7, the Governing Council considered losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation" to be direct losses. Consequently, the Panel decides that Denmark should be compensated for its loss of tangible property resulting from burglary by Iraqi military personnel to the extent the loss is adequately supported by documentary or other appropriate evidence.

77. The Democratic People's Republic of Korea and the Hungarian Ministry of International Economic Relations claim that office equipment and furniture was damaged or looted from their diplomatic missions in Kuwait during the occupation. New Zealand maintains that an embassy car in Kuwait was lost during this period. Each of these Claimants only discovered the losses following the liberation of Kuwait. For the reasons given with respect to the loss of real property in paragraphs 71 to 73 above, the Panel decides that the Claimants should be compensated for their loss of tangible property to the extent such losses are adequately supported by documentary or other appropriate evidence.

78. The Democratic People's Republic of Korea and Nigeria both evacuated their citizens from Kuwait City to Baghdad by car. The Democratic People's

Republic of Korea states that its cars were confiscated by Iraqi officials. The Claimant's allegations are supported by affidavits from Chinese diplomats who witnessed the event. Accordingly, the Panel decides that the Claimant's loss of its cars should be compensated to the extent that it is adequately supported by documentary or other appropriate evidence.

79. Following the liberation of Kuwait, Nigeria was able to retrieve several of the cars that it had left in Iraq. The Claimant seeks compensation for the cost of this activity. In decision 9, paragraph 6, the Governing Council recognized that claimants are under a duty to mitigate damages and has instructed the panels not to compensate losses that "could reasonably have been avoided". 32/ It therefore follows that reasonable expenses incurred by claimants in mitigating damages arising out of Iraq's invasion and occupation of Kuwait should be compensable. 33/ In this case, the Panel decides that Nigeria's retrieval of its cars from Baghdad constituted a reasonable step taken in mitigation of its tangible property losses. Accordingly, the Claimant should be compensated for expenses incurred in the process to the extent that they are adequately supported by documentary or other appropriate evidence.

80. In its review of the Claims seeking compensation for the loss of tangible property, the Panel determined that portions of some of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. First, as one portion of its Claim, Denmark seeks compensation for a car that belonged to its embassy in Kuwait City. The Panel found that the allegations contained in the statement of claim relating to the car did not meet the Commission's particularity requirement for stating a loss. Moreover, the Panel found that the Claimant did not submit appropriate evidence in support of its alleged loss. Accordingly, the Panel cannot recommend compensation for the portion of this Claim relating to the loss of the embassy's car.

81. Second, the Democratic People's Republic of Korea claims in the tangible loss portion of its Claim that its trade office in Kuwait City was robbed by unidentified men the day before it was closed. But the Panel found that, like Denmark's Claim discussed above, the Claimant's statement of claim did not meet the Commission's particularity requirement nor was it supported by any evidence. Accordingly, the Panel cannot recommend compensation for the portion of this Claim relating to the robbery of the trade office.

E. Bank accounts and securities

82. New Zealand claims that, following Iraq's invasion of Kuwait, it was unable to access funds in its bank account in Kuwait. On 15 October 1991, Kuwait's Public Authority for Assessment of Compensation for Damages Resulting from Iraqi Aggression ("PAAC") informed the Commission that Kuwait had made "accounts freely available to all holders of bank accounts in Kuwait ... [thus] there will be no need for such persons to file a claim through the U.N. Process." Accordingly, at the Panel's request, on 21

April 1997, the secretariat communicated this information, in writing, to the Claimant through its Permanent Representative in Geneva. 34/

F. Payment or relief to others

83. Germany seeks compensation for assistance payments made in several cases that were handled by one of its social assistance agencies and which it alleges arose out of the Gulf War. One of the cases for which the Claimant seeks compensation involved the payment of assistance from 11 November 1992 to 28 February 1994 to an Iraqi citizen who was granted political asylum in Germany in 1992. In reviewing this case, the Panel notes that relief payments were only initiated by the Claimant in November of 1992, over eight months after the liberation of Kuwait. In the "C" Report it was determined that:

> "[I]n principle, events giving rise to claimants' losses should have occurred between 2 August 1990 and 2 March 1991 to be attributable to Iraq's activities associated with the invasion and occupation of Kuwait. The occurrence of loss, such as serious personal injury or death, outside that time-frame imposes, in general, an extra burden on a claimant to provide an explanation as to why such loss occurring outside this time-period should be considered a direct result of Iraq's invasion and occupation of Kuwait." 35/

84. Given the time at which the payments were made, the Panel determines that the Claimant has not provided an adequate explanation as to why its payment should be considered a direct result of Iraq's invasion and occupation of Kuwait. Moreover, the Panel recognizes that the Governing Council in decision 1, paragraph 17, stated that "[c]laims will not be considered on behalf of Iraqi nationals who do not have bona fide nationality of any other State". The Panel is concerned that compensation should not be awarded indirectly through a Government to persons who would not be eligible to seek compensation from the Commission for the loss in their own capacity. Based on the foregoing, the Panel cannot recommend that compensation be awarded with respect to the payments made by the Claimant in this case.

85. Another case involved the provision of "general support" to a German family that was given assistance in Germany largely after the liberation of Kuwait. The Panel is of the view that payments by Governments for temporary and extraordinary living expenses that result from individuals' departure from Kuwait or Iraq or their inability to return to those countries during the period of 2 August 1990 to 2 March 1991 are directly related to Iraq's invasion and occupation of Kuwait. 36/ On the other hand, discretionary payments for ongoing ordinary living expenses that are incurred after a person has left the region and taken up a new residence should not normally be considered to be direct consequences of the invasion and occupation of Kuwait. 37/ Accordingly, the Panel decides that ongoing assistance payments such as those made in this case should not be compensated.

86. Two of the cases for which Germany seeks compensation involved the provision of relief during the period of the occupation to students who were cut off from their sources of support in Kuwait and were unable to return home. Another case involved the payment of DM 500 to a Kuwaiti tourist who was stranded at the Köln airport due to Iraq's invasion of Kuwait. The Panel determines that these payments involved the provision of temporary and extraordinary living expenses to persons cut off from their means of support in Kuwait and unable to return as a direct result of Iraq's invasion and occupation of that country. The Panel notes, however, that the Commission cannot award more to Governments who provided relief to others than the recipients of the relief would have been entitled to had they filed an individual claim in category "C". For example, in the "C" Report, income loss claims were limited to seven times a claimant's monthly salary. 18/ For these reasons, the maximum period for which the Panel would consider recommending compensation for temporary relief payments made by a Government to a person whose source of support in Kuwait or Iraq was cutoff is seven months. Accordingly, the Panel decides that temporary and extraordinary assistance payments such as those made in these three cases should be compensated to the extent that they are adequately supported by documentary or other appropriate evidence.

87. Sri Lanka seeks compensation for the KD 368,000 in stolen banknotes obtained through currency exchanges by its Honorary Consul in Jordan from Sri Lankan refugees fleeing Kuwait. As previously noted, the Governing Council considers losses arising out of "[a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation" to be direct losses. 19/

88. In this case, there is a direct link between the theft and circulation of the Central Bank of Kuwait's dinar banknotes by Iraqi officials and the loss incurred by the Claimant. The evidence also demonstrates that the exchanges were made in small amounts in order to provide the Sri Lankan refugees in Jordan with temporary and extraordinary assistance during their evacuation from the region. Finally, the Claim establishes that the notes were exchanged by the Claimant prior to the announcement by the Central Bank of Kuwait, operating in exile, cancelling the stolen currency series. Therefore, the losses incurred by the Claimant were not reasonably avoidable. Consequently, the Panel decides that the Claimant's loss arising out of its receipt of stolen Kuwaiti dinar banknotes should be compensated to the extent it is adequately supported by documentary or other appropriate evidence.

89. In its review of the Claims seeking compensation for the reimbursement of payment or relief to others, the Panel determined that portions of some Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. First, the Hungarian Ministry of Foreign Affairs claims to have paid relief to staff members of its embassies in Kuwait and Baghdad following their evacuation from those

countries. The statement of claim does not explain any of the circumstances under which the payments were made. The Panel found that this portion of the Claim did not meet the Commission's particularity requirement with respect to its statement of claim and therefore cannot recommend compensation for this portion of the Claim.

90. Second, the Netherlands claims that it instituted a "financial assistance scheme" for its diplomats and dependents who were evacuated from the Middle East or who were unable to return to their duty posts following the invasion. However, the documents submitted by the Claimant in support of this loss, both in its original submission and in its response to the Panel's Procedural Order, were in Dutch and were not accompanied by an English translation as required by article 6 of the Rules. Accordingly, the Panel could not consider the evidence and therefore cannot recommend that compensation be awarded for this alleged loss.

G. Evacuation costs

91. Several Claimants, including the Democratic People's Republic of Korea, Denmark, the Hungarian Ministry of Foreign Affairs, the Netherlands, New Zealand and Nigeria, seek compensation for the costs incurred in evacuating their citizens and other nationals from Kuwait and Iraq following Iraq's invasion and occupation of Kuwait. The Governing Council considered such costs to be a direct loss, provided that they were incurred by "a Government in evacuating its nationals from Iraq or Kuwait." 40/ Consequently, the Panel decides that costs incurred by Governments in evacuating their citizens from Iraq or Kuwait during the period of 2 August 1990 to 2 March 1991 should be compensated to the extent they are adequately supported by documentary or other appropriate evidence.

92. Although the costs incurred by Governments in the evacuation of other nationals, i.e. citizens of countries different from the evacuating Government, from Iraq or Kuwait are not expressly mentioned in decision 7, the Panel understands that the Governing Council intended that such costs also be considered to be direct losses. This understanding is based upon, inter alia, the fact that, after issuing decision 7, the Governing Council approved the "F" Claim Form, which classifies "evacuation costs (of citizens or other nationals)" as a type of loss that may be claimed. Accordingly, the Panel decides that the costs incurred by Governments in evacuating other nationals from Iraq and Kuwait should be compensable on the same basis as those costs incurred by Governments in evacuating their own citizens.

93. Denmark also seeks compensation for the costs incurred in evacuating its citizens (primarily diplomats) from countries other than Iraq and Kuwait. However, only costs incurred in evacuating citizens from "Iraq or Kuwait", and not from other countries, are mentioned as being compensable in decision 7. The Governing Council did, however, consider any "loss suffered as a result of ... [m]ilitary operations or threat of military

action by either side during the period 2 August 1990 to 2 March 1991" to be a "direct loss, damage or injury". 41/

94. The Panel decides that this provision of decision 7 can serve as the basis for claims in respect of evacuation from other countries provided a claimant can establish a direct causal link between its loss and Iraq's invasion and occupation of Kuwait. Such a link can be shown where actual military operations were conducted against a country from which persons were evacuated or where an actual - as opposed to speculative - threat of military action existed against a country from which an evacuation took place. In these circumstances, the Panel agrees with the holding of the "C" Panel, that "a claim based on an incident occurring outside Kuwait or Iraq needs to be more fully substantiated" in order to establish the necessary causal link between the loss and the invasion and occupation of Kuwait. 42/

95. In considering this issue, the Panel, pursuant to article 36(b) of the Rules, requested information from various non-claimant Governments regarding the measures they took with respect to the evacuation of citizens from other Middle Eastern countries during the relevant period. The Panel also requested that the secretariat research the range and use of Iraqi SCUD missiles during the period of Iraq's invasion and occupation of Kuwait and the location of any military actions that were conducted by either side in countries other than Iraq and Kuwait.

96. Based on its investigation, the Panel found that "military operations or [the] threat of military action" were directed against Saudi Arabia and Israel in addition to Kuwait and Iraq. At one point, Iraqi ground forces actually crossed the Saudi Arabian border and engaged the Saudi Arabian and Allied Coalition armed forces in combat. Additionally, Saudi Arabia and Israel were threatened with and subjected to a series of SCUD missile attacks launched by Iraq. Consequently, the Panel decides that the costs incurred by Governments in evacuating citizens from Saudi Arabia and Israel should be compensated on the same basis as those costs incurred by Governments in evacuating persons from Iraq or Kuwait. For these reasons, the Panel decides that the portion of Denmark's Claim which relates to the cost of evacuating citizens from Saudi Arabia and Israel should be compensated to the extent that it is adequately supported by documentary or other appropriate evidence.

97. In its review of the Claims seeking compensation for the reimbursement of evacuation expenses, the Panel determined that a portion of one of the Claims did not meet the pleading and evidentiary requirements set forth in paragraphs 56 to 59 above. The Democratic People's Republic of Korea states that it "obtained through [an] unofficial channel" "exit permission" to leave Iraq by paying a fee. The Claimant seeks compensation for the amount it paid for such permission. In decision 7, paragraph 14(c), the Governing Council considered that "any loss suffered as a result of ... [a]ctions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the

invasion and occupation" are compensable. However, the Claimant has not made a showing that its loss is covered by this provision of decision 7. For example, the Claimant does not identify the "channel" through which the payment was made nor does it allege that the payment was made under compulsion. Consequently, the Panel cannot recommend that compensation be awarded for this claimed loss.

H. Public service expenditures

98. Nigeria seeks compensation for the cost of operating a temporary embassy in Abu Dhabi following the closure of its embassy in Kuwait City. The Panel considers that, even if Nigeria would not otherwise have opened an embassy in Abu Dhabi, its voluntary and independent decision to operate a diplomatic mission there during the period of the occupation of Kuwait has not resulted in a direct loss within the meaning of paragraph 16 of resolution 687 (1991).

V. OTHER ISSUES

A. Currency exchange rate

99. While several Claimants stated their Claims or incurred losses in currencies other than United States dollars, the Commission issues its awards in that currency. Therefore, the Panel is required to determine the appropriate rate of exchange to apply to losses or Claims expressed in other currencies.

100. Courts or tribunals generally use one of three dates in determining the proper rate of exchange: the date of loss; the date of judgment; or the date of payment in execution of the judgment. 43/ The Panel believes that, according to general principles of international law, applying the currency exchange rate as of the date of the loss is the best method of calculating the rate of exchange for the present Claims. In discussing the application of this method in international practice, the "C" Panel observed that "'[n]ormally the value of a claim is computed in the foreign currency at the time of loss or damage and then converted into the currency of the claimant's country using the rate of exchange available at the time the claim arose'". 44/

101. With respect to the nine Claims that are the subject of this report, the Panel finds that the alleged losses occurred during the period of Iraq's occupation of Kuwait from 2 August 1990 through 2 March 1991. It is impractical for the Panel to attempt to determine with precision the date of each individual loss that underlies the Claims. The Panel has observed, however, that the losses appear to have arisen fairly regularly throughout the period of the occupation. Because the losses occurred over a fixed period of time and consisted of numerous individual costs or property losses, the Panel uses 16 November 1990, the midpoint of the occupation period, as the date of loss for purposes of the application of currency exchange rates. 45/

102. Due to Iraq's invasion and occupation of Kuwait, there was a significant disturbance of the exchange rate for the Kuwaiti dinar during the period of the occupation. The Panel, therefore, uses the exchange rate for the Kuwaiti dinar that prevailed immediately before the invasion for this purpose. 46/

B. Interest

103. The Governing Council in decision 16 decided that "[i]nterest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". 47/ However, the Governing Council provided in decision 16 that the "methods of calculation and of payment of interest will be considered by the Governing Council at the appropriate time [and that] [i]nterest will be paid [only] after the principal amount of the awards". 48/ Accordingly, the only decision that the Panel must make with respect to the issue of interest is the date when the losses alleged in these Claims occurred.

104. For the same reasons that the Panel uses 16 November 1990 as the date of loss for the purpose of calculating currency exchange rates, it determines that the same date should be used for purposes of interest calculation. 49/ In view of the foregoing, the Panel determines that interest be awarded on the Claims as of 16 November 1990.

VI. QUANTIFICATION OF THE CLAIMS

105. As discussed above, the Panel decided that certain loss elements within the Claims should not be compensated either because they failed to meet the Commission's pleading and evidentiary standard or because they failed to meet the directness requirement established in resolution 687 (1991).

106. Concerning the quantification of loss elements that the Panel decided were compensable, the Panel, assisted by the secretariat, undertook a careful examination of the statements of claim and the evidence underlying each Claim. In addition to verifying that the stated losses did occur, the Panel considered the reasonableness of the Claimants' actions and the amounts claimed. For example, in the evacuation context, one Claimant purchased gas masks for its citizens to carry on the overland journey from Kuwait to Jordan. The Panel determined that this expense was reasonable and it was allowed. The same Claimant also submitted invoices for first class air travel for some of its evacuees. The Panel determined that such an expense was unreasonable and only allowed the cost of economy class travel.

107. Furthermore, the Panel was assisted by loss adjusters with experience in handling major catastrophic events at the international level. 50/ Under the Panel's supervision and guidance, the loss adjusters reviewed the information and evidence submitted by the Claimants and, in a number of

cases, advised the Panel regarding the quantification of the Claims. Such advice was generally based on the loss adjusters' comparison of the level and type of evidence submitted by the Claimants with the level and type of evidence that claimants usually are able to produce to justify losses arising out of catastrophic events such as hurricanes or floods in the international insurance context. The experts also discussed general loss adjustment principles such as depreciation and betterment with the Panel in the context of specific Claims. The Panel's use of experts in this manner is consistent with the established practice of the Commission 51/ and other international claims commissions and tribunals. 52/

108. Based upon its review and evaluation of the Claims and the advice of the loss adjusters, the Panel makes the following determinations with regard to the quantification of the Claims, which are summarized by loss classification in the table below. The amounts are stated in United States dollars. These amounts have been rounded to the nearest dollar.

QUANTIFICATION BY LOSS ELEMENT									
Claimant	Contract	Business transaction or course of dealing	Real property	Tangible property	Bank accounts and securities	Payment or relief to others	Evacuation costs	Public service expenditures	Total amount recommended
Democratic People's Republic of Korea		0		48,782			69,968		118,750
Denmark			0	10,151			586,606		596,757
Germany						5,943			5,943
Hungarian Ministry of Foreign Affairs	21,067		17,489			0	92,084		130,639
Hungarian Ministry of International Economic Relations			10,332	15,629					25,961
The Netherlands	103,367					0	1,007		104,374
New Zealand	21,928			10,517	0		28,188		60,633
Nigeria			9,468	12,074			51,949	0	73,491
Sri Lanka						1,103,295			1,103,295
Total									2,220,043

VII. RECOMMENDATIONS

109. Based on the foregoing, the Panel recommends that the following amounts should be paid in compensation for losses incurred by the claimant Governments as a direct result of Iraq's invasion and occupation of Kuwait:

(a) The Democratic People's Republic of Korea for its State Commission of External Economic Affairs: US$118,750;

(b) The Kingdom of Denmark for its Ministry of Foreign Affairs: US$596,757;

(c) The Federal Republic of Germany for the North Rhine-Westphalia Ministry of Employment, Health and Social Affairs: US$5,943;

(d) The Republic of Hungary for its Ministry of Foreign Affairs: US$130,639;

(e) The Republic of Hungary for its Ministry of International Economic Relations: US$25,961;

(f) The Kingdom of the Netherlands for its Ministry of Foreign Affairs: US$104,374;

(g) New Zealand for its Ministry of Foreign Affairs and Trade: US$60,833;

(h) The Federal Republic of Nigeria for the Nigerian Embassy in Kuwait: US$75,491, and

(i) The Democratic Socialist Republic of Sri Lanka for its Ministry of Foreign Affairs: US$1,103,295.

Geneva, 25 September 1997

(Signed) Mr. Bjorn Haug
Chairman

(Signed) Mr. Georges Abi-Saab
Commissioner

(Signed) Mr. Michael J. Bonell
Commissioner

Notes

1/ See Security Council resolution 692 (1991), para. 3.

2/ This report adopts the currency abbreviations contained in Terminology Bulletin No. 343, Currency Units (United Nations Publication, Sales No. A/C/E/F/R/S.91.I.16)(ST/CS/SER.F/343).

3/ "Report submitted by the Executive Secretary to the Governing Council in accordance with article 16 of the Provisional Rules for Claims Procedure (Report No. 15)" (S/AC.26/1996/R.2), and "Report submitted by the Executive Secretary to the Governing Council in accordance with article 16 of the Provisional Rules For Claims Procedure (Report No. 16)" (S/AC.26/1996/R.16).

4/ Governing Council decision 10, "Provisional Rules for Claims Procedure" (S/AC.26/1992/10).

5/ The approximate amounts claimed are stated in United States dollars, although many of the Claims were originally stated in other currencies.

6/ Category "C" claims are claims of individuals for damages up to US$100,000. Category "D" claims are claims of individuals for damages above US$100,000.

7/ These requests were directed to Denmark, Germany, Hungary, the Netherlands and Sri Lanka.

8/ As a result of its investigation, the Panel concluded that two of the persons reimbursed by the Netherlands for the loss of personal property, two of the persons given assistance by Germany and two of the Ministry of Foreign Affairs employees who received relief from Hungary had filed claims for the same losses in category "C". This information was confirmed by a review of the claim documents filed by the individual claimants in category "C" and the information contained in the Claimants' responses to the Procedural Orders. Consequently, the Panel cannot recommend that compensation be paid to the Claimants for these losses in the present proceedings.

9/ Governing Council decision 7, "Criteria for additional Categories of Claims" (S/AC.26/1991/7/Rev.1).

10/ Given that there are two Hungarian claims covered by this report, they will be referred to, where necessary, by the full names of the Ministries for whom the Claims were submitted in order to avoid confusion.

11/ Although the Panel has read portions of the Kuwait Central Bank claim as part of its investigations here, that claim is not currently under formal review by the Panel.

12/ See Security Council resolution 686 (1991), fourth paragraph of the preamble. This resolution specifically refers to Security Council resolutions 660 (1990), 661 (1990), 662 (1990), 664 (1990), 665 (1990), 666 (1990), 669 (1990), 670 (1990), 674 (1990), 677 (1990) and 678 (1990).

13/ See Security Council resolution 674 (1990), para. 8.

14/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim" (S/AC.26/1996/5/Annex) (the "WBC Claim Report"), para. 67. The Panel found that the Security Council had also acted under Chapter VII when it passed

resolution 692 (1991), in which it decided to establish the Commission and the Compensation Fund referred to in paragraph 18 of resolution 687 (1991).

15/ See, for example, "Report and Recommendations Made by the Panel of Commissioners Concerning the First Instalment of Individual Claims for Damages up to US$100,000 (Category 'C' Claims)" (S/AC.26/1994/3) (the "'C' Report") p. 9. See also WBC Claim Report, para. 68 (the Panel held that "the issue of Iraq's liability has been resolved by the Security Council" and thus constitutes part of the law applicable before the Commission).

16/ Governing Council decision 7, para. 34.

17/ Governing Council decision 9, "Propositions and Conclusions on Compensation for Business Losses: Types of Damages and Their Valuation" (S/AC.26/1992/9), para. 11.

18/ See, for example, WBC Claim Report, para. 71.

19/ Governing Council decision 15, "Compensation for Business Losses Resulting from Iraq's Unlawful Invasion and Occupation of Kuwait where the Trade Embargo and Related Measures Were also a Cause" (S/AC.26/1992/15), para. 5.

20/ "United Nations Compensation Commission Claim Form for Governments and International Organizations ('F Form')" (the "'F' Claim Form"), para. 4. Indeed, on 16 October 1992, the Commission's Executive Secretary circulated a letter to the Permanent Representatives of United Nations Member States which restated the pleading and evidentiary standard set forth in the Rules and on the "F" Claim Form (S/AC.26/1992/None No.55).

21/ See also "F" Claim Form, paragraph 4, which specifically instructs claimants as to the evidentiary requirement set forth in article 35 of the Rules.

22/ See, for example, M & M Productions, Inc. v. Iran, Iran-United States Claims Tribunal Reports, (Cambridge, Grotius) ("Iran-U.S. C.T.R."), vol. 6 (1984), p. 125 et seq., at p. 127. (Claim dismissed because "the pleadings and evidence in the case ... fail to establish to the Tribunal's satisfaction any substantive basis for Claimant's claim against Respondent".) Accord Karim-Panahi v. United States of America, Iran-U.S. C.T.R., vol. 28 (1992), p. 225 et seq., at p. 228. (Claim dismissed because "[a]part from generalized allegations of the United States involvement, the Claimant's statements remain so vague and devoid of any supporting evidence as to fail to state a cognizable claim or cause of action".) See also Cyprus Petroleum Ltd. v. Iran, Iran-U.S. C.T.R., vol. 11 (1986), p. 70 et seq., at p. 71. (Claim dismissed because "[n]either in the Statement of Claim nor in subsequent filings does the Claimant detail the substance of its allegations or provide any evidence to support them".)

23/ Compare UNIDROIT Principles of International Commercial Contracts ("UNIDROIT Principles"), art. 7.4.3(3). ("Where the amount of damages cannot be established with a sufficient degree of certainty, the assessment is at the discretion of the court.")

24/ In his report to the Security Council regarding the implementation of resolution 687 (1991) and the establishment of the Commission, the Secretary-General proposed that the Commission operate as follows:

> "The Commission is not a court or an arbitral tribunal before which parties appear; it is a political organ that performs an essentially fact-finding function of examining claims, verifying their validity,

evaluating losses, assessing payments and resolving disputed claims. It is only in this last respect that a quasi-judicial function may be involved. Given the nature of the Commission, it is all the more important that some element of due process be built into the procedure. It will be the function of the commissioners to provide this element."

"Report of the Secretary-General pursuant to paragraph 19 of Security Council resolution 687 (1991)" (S/22559) ("Secretary-General's report"), para. 20. This proposal formed part of section II of the Secretary-General's report, which the Governing Council was directed to take into account when implementing the provisions of section E of Security Council resolution 687 (1991). See Security Council resolution 692 (1991), para. 5.

15/ Governing Council decision 7, para. 36.

16/ Governing Council decision 1, "Criteria for Expedited Processing of Claims" (S/AC.26/1991/1), para. 14. See also Marjorie M. Whiteman, Damages in International Law, (Washington, United States Government Printing Office, 1943) ("Whiteman"), vol. 3, p. 1781. (The Commission on Indemnities, constituted after the I-ho T'uan chi yi [referred to in the Whiteman text as the "Boxer Uprising"] in June 1900, "considers that the cases specified below constitute an immediate and direct consequence of the events of 1900 ... [loss of] [f]urniture and private property belonging to the staff of the legations and consulates".) (Quoting the Commissioner of the United States to China.)

17/ See, for example, UNIDROIT Principles, arts. 7.1.7, 7.3.5, 7.3.6 and 7.4.9.

18/ Governing Council decision 7, para. 36. See also Whiteman, op. cit., p. 1781. (The I-ho T'uan chi yi Commission on Indemnities considered that, with respect to Governments, the following losses were direct: "[b]uildings of legations and consulates destroyed or damaged, taking into account new requirements, being an immediate and direct consequence of the above events, inclusive of ... repairs ... Furniture and all property belonging to the Government.'") (Quoting the Commissioner of the United States to China.)

19/ Governing Council decision 7, para. 34(d).

20/ Governing Council decision 9, para. 13. See also Whiteman, op. cit., p. 1780. (In discussing what losses incurred by German nationals were considered to be direct in light of the arbitrator's decision that military action taken by the United States and Great Britain in Samoa was unwarranted, the American and British Commissioners submitted the following in the Commission set up pursuant to the Convention of November 7, 1899: "'[i]t may be admitted that where the occupants of a house were obliged to flee for refuge when the bombardment began, and were unable, from fear of personal injury or other causes, to return to protect their property, and it was looted by the natives in their absence, the damage thus resulting may be said to be approximately caused by the military operations'".) (Quoting "Joint Report No. II of August 12, 1904".)

21/ For example, article 45 of the 1961 Vienna Convention on Diplomatic Relations (United Nations, Treaty Series, vol. 500, p. 95), merely provides that, in the case of a permanent or temporary closure of a diplomatic mission, "the receiving State must, even in the case of armed conflict, respect and protect the premises of the mission, together with its property and archives".

12/ This is a general principle of law. Compare UNIDROIT Principles, art. 7.4.8(1). ("The nonperforming party is not liable for harm suffered by the aggrieved party to the extent that the harm could have been reduced by the latter party's taking reasonable steps.")

13/ Ibid., art. 7.4.8(2). ("The aggrieved party is entitled to recover any expenses reasonably incurred in attempting to reduce the harm.") See also, for example, Watkins-Johnson Company and Watkins-Johnson Limited v. Iran, Iran-U.S. C.T.R., vol. 22 (1989), p. 218 et seq., at p. 245, where, having held that the claimant's right to sell equipment in mitigation of its damages was consistent with international law, the Tribunal held that the claimant was "entitled to deduct from the proceeds reasonable expenses incurred in carrying out the sale".

14/ The funds held by the Claimant in its Kuwaiti bank account were denominated in Iraqi dinars as opposed to Kuwaiti dinars. As a result of the severe decline in the value of the Iraqi dinar following Iraq's invasion and occupation of Kuwait, the funds in the Claimant's account were worth far less when it submitted its Claim than they were on the day of the invasion, the date from which the Claimant was presumably unable to obtain access to the account. In its Claim, the Claimant merely sought compensation for the funds in the account, which it alleged was blocked. It did not allege a loss based on the diminution in value of the Iraqi dinars held in the account during the relevant period nor did it demonstrate that such a diminution was a direct result of Iraq's invasion and occupation of Kuwait.

15/ "C" Report, p. 13. Accord "Recommendations Made by the Panel of Commissioners Concerning Individual Claims for Serious Personal Injury or Death (Category "B" Claims)" (S/AC.26/1994/1) (the "'B' Report"), pp. 12-13.

16/ Compare Whiteman, op. cit., pp. 1810-1811. ("In a claim presented to the Government of China arising out of the Szechuan riots in May and June 1895, the United States sought compensation for the "'expenses incidently and necessarily incurred by our missionaries in removing to a place of safety, and while residing there [for six months] through enforced inability to return to their residences, are proper items to be embodied in the claims.' The items were reimbursed.") (Quoting Secretary Olney.)

17/ Compare Whiteman, op. cit., p. 1802. ("In a claim presented by the United States to the United States-German Mixed Claims Commission arising out of the sinking of the Lusitania, the claimant sought compensation because "his living expenses were increased by reason of the fact that [his brother who died in the sinking] no longer shared and divided the expense of a room with him and ... that the burden of supporting, maintaining and educating his sister" now fell solely on him. "Umpire Parker disallowed the claim on the ground that the damages, if any, suffered by [the claimant] were 'too remote in legal contemplation to form the basis of an award.'"). See also pp. 1782-1783. (The I-ho T'uan chi yi Commission on Indemnities considered that with respect to private individuals "travelling expenses other than journeys to the nearest place of safety" should "not be considered an immediate and direct consequence of the events of 1900.") (Quoting the Commissioner of the United States to China.)

18/ "C" Report, pp. 192-93.

19/ Governing Council decision 7, para. 34(c).

20/ Ibid., para. 36.

21/ Ibid., para. 34(a).

42/ "C" Report, p. 13.

43/ See, for example, "C" Report, p. 30.

44/ Ibid., (Citing Richard B. Lillich, International Claims: Postwar British Practice, (Syracuse, Syracuse University Press, 1967), p.127. This method has been applied in cases before the Iran-United States Claims Tribunal. See, for example, Blount Brothers Corporation v. Iran, Iran-U.S. C.T.R., vol. 10 (1986), p. 56 et seq., at p. 78.

45/ Compare WBC Claim Report, para. 66.

46/ See, for example, "C" Report, p. 31. The exchange rates used for 1 August 1990 for the Kuwaiti dinar and 16 November 1990 for the other currencies are the average monthly rates for such currencies as reported in the United Nations Monthly Bulletin of Statistics, vol. XLV, No. 4, April 1991 (ST/ESA/STAT/SER.Q/220). The exchange rate adopted by the Panel for the Kuwaiti dinar will not, however, be applied to the Sri Lankan Ministry of Foreign Affairs Claim. In that Claim, the Claimant alleges that it exchanged Kuwaiti dinars for United States dollars at a 3:1 rate. That rate is less than the rate of 3.46:1 prevailing on 1 August 1990. Thus, the application of the pre-invasion rate to the loss would have resulted in an unjustified windfall for the Claimant.

47/ Governing Council decision 16, "Awards of Interest" (S/AC.26/1992/16), para. 1.

48/ Ibid., paras. 2-3.

49/ See, for example, WBC Claim Report, paras. 229-230.

50/ Article 36 of the Rules states that the panels may request "expert advice, as necessary".

51/ See, for example, WBC Claim Report, paras. 9-10. ("The secretariat also retained the services of an accounting consultant to assist the secretariat and the Panel in reviewing the accounting materials submitted by the Claimant and in drafting the interrogatories ... The accounting consultant also participated as a member of the verification team in the performance of the on-site inspection in Kuwait and in the review of the [Touche Ross] working papers.") See also "B" Report, p. 9. (The secretariat retained the Secretary-General of the International Society of Disaster Medicine to preliminarily examine the claims. Later, the same expert assisted the Category "B" Panel with its review of the claims.) "C" Report, p. 271. (Experts in medicine, psychiatry, labour law and mass litigation assisted the Category "C" Panel with its review of the claims.)

52/ See generally Gillian White, The Use of Experts by International Tribunals, (Syracuse, Syracuse University Press, 1965), p. 143. See also Starrett Housing Corp. v. Iran, Iran-U.S. C.T.R., vol. 16 (1987), p. 112 et seq., at pp. 198-199.